

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re: DEEP MARINE HOLDINGS, INC. § CASE NO.: 09-39313  
et al § Jointly administered  
§ Chapter 11  
Debtors §

**BEAUTY ELITE PROPERTIES, L.P.'S MOTION TO COMPEL ASSUMPTION OR  
REJECTION OF UNEXPIRED COMMERCIAL PROPERTY LEASE AND TO  
COMPEL IMMEDIATE PERFORMANCE OF THE LEASE BY DEEP MARINE  
TECHNOLOGY, INC.**

TO THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE:

Beauty Elite Properties, L.P.<sup>1</sup> asks the court for an order compelling Deep Technology, Inc.<sup>2</sup> to assume or reject an unexpired commercial property lease.

1. Beauty Elite and DMT are parties to an unexpired lease contract whereby DMT leased from Beauty Elite commercial real estate at 20411 Imperial Valley Road, Houston, Texas 77073.<sup>3</sup> DMT promised to pay monthly rent, beginning in July 1, 2008 and ending April 30, 2013.<sup>4</sup> DMT's rent plus CAM is currently \$47,698.48 per month.

2. DMT defaulted on the lease because it did not pay Beauty Elite the rent due December 1, 2009, covering the December 2009 period. Despite this, DMT continues to use the premises as its primary facility.<sup>5</sup> As of the filing date of this bankruptcy, DMT owes \$47,698.48 for December rent.

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<sup>1</sup> "Beauty Elite."

<sup>2</sup> "DMT."

<sup>3</sup> Exhibit A.

<sup>4</sup> Ex. A.

<sup>5</sup> Docket Entry #1 at 1.

3. DMT's default entitles Beauty Elite to terminate DMT's right to occupy the premises.<sup>6</sup> DMT's bankruptcy petition automatically stayed any termination efforts.

4. To date, DMT has not assumed or rejected the lease and has not cured its default. DMT has not filed any schedules in this case.

### **Jurisdiction and Venue**

5. This court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408-09. Beauty Elite seeks relief under § 365 of the Bankruptcy Code.

### **Argument**

6. Section 365(d)(2) empowers the court to compel DMT to assume or reject a unexpired lease. The time to assume or reject an unexpired lease is within the court's discretion.<sup>7</sup> Based on the facts and circumstances, the court may set a reasonable period of time for DMT to decide.<sup>8</sup>

7. This lease concerns DMT's primary facility. Shelter being one of the most basic needs, DMT should know by now whether it intends to remain at this location or move. DMT's indecision allows DMT a free ride and holds Beauty Elite hostage because Beauty Elite will be required to extend to DMT \$47,698.48 of new value every month, at no cost and with no assurance of ultimately being paid. Because DMT has not filed any schedules in this case, it is impossible to determine whether Beauty Elite will ever be paid.

8. DMT's indecision also harms Beauty Elite because—if DMT ultimately rejects the lease—Beauty Elite will need to re-market the property. The market for this property is

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<sup>6</sup> Ex. A.

<sup>7</sup> In re Burger Boys, Inc., 94 F.3d 755, 760 (2nd Cir. 1996).

<sup>8</sup> In re Beker Indus. Corp., 64 B.R. 890, 897 (Bankr. S.D.N.Y. 1986).

specialized and limited, the run-up and preparation to listing the property is considerable, and every day that DMT dithers is a lost opportunity to Beauty Elite.

9. This much is clear: from December 1, 2009 to present, DMT enjoyed the property without paying any rent. Every day, DMT unlocks the doors, turns on the lights, and enjoys the premises—for free. Meanwhile, Beauty Elite is held in limbo, unable to exercise any rights and unable to seek a new, paying tenant.

10. The court should compel DMT to decide whether it will assume or reject the lease. In either event, DMT should also be required to cure its default by paying the December rent, and to provide assurance of future payments under the lease.

For these reasons, Beauty Elite prays that the court compel Deep Marine Technology, Inc. to assume or reject the unexpired lease for 20411 Imperial Valley Road, Houston, Texas 77073, and to compel Deep Marine Technology, Inc.'s immediate cure and performance of the lease, and for any additional legal or equitable relief to which it may show itself justly entitled.

Respectfully submitted,

By: /s/Anderson L. Cao  
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**CERTIFICATE OF CONFERENCE**

I conferred with the debtor's counsel regarding the substance of this motion and counsel is opposed.

/s/Anderson L. Cao

Anderson L. Cao

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was, pursuant to Local Rule 9013(f), mailed U.S. Mail, postage prepaid to all parties on the attached Service List(s) on this the 10th of December 2009.

/s/Anderson L. Cao

Anderson L. Cao

**DEEP MARINE HOLDINGS, INC.  
CONSOLIDATED SERVICE LIST\***

**DEBTORS**

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Deep Marine 2, LLC  
Deep Marine 3, LLC  
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